

## Wages

- Employers can deposit wages directly into employees' bank accounts – as long as the employee has reasonable access to a financial institution.

## Vacation with Pay

- While the *ESA* still requires employers to schedule vacations in one or two week blocks, it also allows employees to request that their vacation time be scheduled in other ways. For example, on an employee's written request, and with the agreement of the employer, vacation could be taken in shorter periods such as one day at a time.

## Public Holidays

- More employees will be eligible for public holiday time off with pay. Public holiday pay will be based on the regular wages and vacation pay payable to an employee during the four weeks prior to the holiday – divided by 20. There are eight public holidays in each calendar year in Ontario. They are: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

## Temporary Layoffs

- An employer may put an employee on a temporary layoff without providing a recall date. In this case, the employee is not automatically considered to have lost his or her job. Termination and severance pay are not owing immediately just because the employer has not provided a recall date. However, termination and severance pay are owing if the employer lays off the employee for more than a temporary layoff.

## Homeworkers

- It is no longer necessary for employers to obtain Ministry of Labour permits to hire homeworkers. Employers are required, however, to keep information on their homeworkers in a registry for a minimum of three years after the homeworker ceases to be employed by the employer.

## Enforcement and Compliance

- Employment standards officers have the right to look into possible violations of the *ESA*. That includes the right to inspect workplaces.

- All persons must co-operate with investigations and inspections carried out under the *ESA*.

- Employment standards officers have new powers, including the power to order employers to comply with the *ESA*; and to make them reinstate or compensate an employee in cases of reprisal.

- The *ESA* allows an employment standards officer to issue a Notice of Contravention imposing a monetary penalty on an employer who has violated the *ESA* (except where a collective agreement is in place).

- Employees and employers retain the right to ask the Ontario Labour Relations Board to review an order of an employment standards officer. After an employment standards officer makes an order, an employee or employer has only 30 days from the day it is served to make an appeal to the board. (Notices of Contravention may also be appealed.)

- Individual fines for a conviction under the *ESA* remain at a maximum of \$50,000 – but the maximum jail term increases to 12 months from six.

- Maximum fines for corporations escalate as follows: \$100,000 for the first conviction; \$250,000 for the second conviction; and \$500,000 for the third conviction.

When an employee makes a complaint against an employer, the employee can only recover money that was due and payable in the six months before the complaint was filed. (For example: if the complaint was filed on October 1, the employee couldn't recover any money owed him or her before April 1 of the same year.) If there are continuing violations, however, an employee *may* recover wages for a 12-month period before the complaint was filed – as long as there has been a contravention of the same provision of the *ESA* in the six months before the date of the complaint.

If the employee is filing a complaint seeking compensation (for something other than unpaid wages) or reinstatement, the Ministry of Labour may be able to provide a remedy if the complaint is filed within two years of the date the violation occurred.

**Proactive inspections:** When an employment standards officer finds that there is a contravention of the *ESA*, he or she has the authority to recover the money that was due to the employee in the six months before the inspection began. If the employment standards officer finds that there are continuing contraventions of the same provision of the *ESA*, however, he or she has the authority to recover wages for the 12 months before the inspection began.

To begin a prosecution, the ministry has a period of two years from the date on which an offence was committed or alleged to have been committed.

For information on how to file a claim, please call the Employment Standards Information Centre (see below), or visit your nearest Ministry of Labour office (see the Blue Pages).

The *ESA* also covers Benefit Plans, Termination of Employment, Severance, Equal Pay for Equal Work, Keeping Records and Retail Employees Right to Refuse Public Holiday Work and other topics.

### For More Information

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the *ESA* can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: <http://www.gov.on.ca/lab/main.htm>

You can order copies of the *ESA* and related information materials, *when they become available*, from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at <http://www.e-laws.gov.on.ca/> or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.

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employment standards act

## What is the Employment Standards Act?

The Employment Standards Act, 2000 (ESA) is legislation that sets out rights and responsibilities of employees and employers in Ontario workplaces.

The Ontario Legislature passed the *ESA* on December 20, 2000, and it received Royal Assent the next day. The *ESA* does not come into effect, however, until it is proclaimed into law. Proclamation is expected to take place in September, 2001.

Since the *ESA* received Royal Assent, the government has held consultations on the exemption regulations, updated policy and procedures manuals and prepared information materials (such as this brochure) for employees and employers. People in the workplace have had some time to become familiar with and prepare for the new rules that will govern their relationships.

*Until proclamation of the *ESA*, the current Employment Standards Act, R.S.O. 1990, c. E.14, remains in effect.*

The wide range of topics covered under the *ESA* include:

### Posting Requirements

#### Pregnancy and Parental Leave

#### Emergency Leave

#### Hours of Work and Overtime

#### Rest Periods

#### Wages

#### Vacation with Pay

#### Public Holidays

#### Temporary Layoffs

#### Homeworkers

#### Enforcement and Compliance

The *ESA* repeals five provincial employment law statutes. They are: the previous *Employment Standards Act*, the *One Day's Rest in Seven Act*, the *Government Contracts Hours and Wages Act*, the *Employment Agencies Act*, and the *Industrial Standards Act*.

## Why Has the *ESA* Been Changed?

The Ontario government has made a commitment that, within 10 years, the province will enjoy the best-performing economy and the highest quality of life in North America.

The government has made this pledge while recognizing that it also faces real and pressing tests: the world economy is changing at a rapid pace; technology is advancing at a rate that is unprecedented; and the composition of the labour force has shifted significantly.

One way the government plans to strengthen the economy is to eliminate barriers to growth. A number of tools can be used to do this – such as reducing red tape or ensuring that provincial laws meet the demands of today's workforce.

That's where the *ESA* comes in. It gives employers and employees greater flexibility to design work arrangements that better reflect today's business and personal needs.

The flexible and modern *ESA* will help workers get fair treatment; employers to become more productive; and Ontario to attract jobs and investment and stimulate growth.

## Have Any Changes Already Taken Place?

Yes. Parental leave has been extended and is in effect now (see next section). The *Employment Agencies Act* has been repealed.

## Who is Covered Under the *ESA*?

The *ESA* covers every employee and employer in Ontario, with a number of specific exceptions. For example, the following persons *not* covered by the *ESA* include:

- Employees and employers in sectors that fall under federal jurisdiction (such as banking and interprovincial transportation);
- Individuals performing work in a work experience program authorized by a school board, college of applied arts and technology or university;
- People who are required to do community participation to qualify for social assistance;
- Police officers;
- Inmates taking part in work programs;
- People who hold political, judicial, religious or trade union offices; and

- Employees of the Crown – who are excluded from most (but not all) provisions of the *ESA*.

There are other exemptions set out in the *ESA* and in the regulations. Check the *ESA* and regulations for a complete listing. Regulations also set exemptions, special rules and details about how to apply certain sections of the *ESA*.

## What Are Some of the Key Provisions in the *ESA*?

Some of the key parts of the *ESA* are outlined below.

*Please remember, however, that this brochure contains only general information about the *ESA*. For precise details and exact language you should refer to the *ESA* itself. Information on how to obtain a copy of the *ESA*, when it becomes available, is provided at the end of this brochure.*

## Posting Requirements

- Employers must post in their workplaces Ministry of Labour documents that outline the rights and obligations of employees and employers under the *ESA*.

## Pregnancy and Parental Leave

- Effective December 30, 2000, birth mothers are entitled to take 17 weeks of pregnancy leave and 35 weeks of job-protected parental leave if the child was born – or first came into the care, custody and control of the employee – on or after December 31, 2000. All other new parents can take up to 37 weeks of leave. As a result, if each parent of a new-born child elects to take the maximum allowable job-protected leave at separate times, the newborn could have a parent at home for up to 89 weeks. (The 89 weeks include: 17 weeks of pregnancy leave [birth mother], plus 35 weeks of leave [birth mother], plus another 37 weeks of leave [other parent].) *These provisions are already in effect.*

- If an employee is on pregnancy or parental leave and decides to resign before he or she returns to work, he or she must give at least four weeks written notice to his or her employer.

## Emergency Leave

- Unpaid, job-protected emergency leave of up to 10 days each year will be available for any employee who works for a company that regularly employs 50 or more employees.

## Hours of Work and Overtime

- The daily limit is eight hours of work a day, or the number of hours in a regular work day established by the employer.
- The weekly limit is 48 hours.
- Under the *ESA*, employees can agree, in writing, to longer daily and weekly work (up to 60 hours a week) without the employer having to get approval from the ministry.
- Most employees receive overtime pay after 44 hours of work each week. The overtime rate is 1½ times the regular rate of pay.
- Employees can take time off at the rate of 1½ hours for each hour of overtime worked, instead of overtime pay, if they and their employers agree in writing.
- If an employee and employer agree in writing, the employee's hours of work can be averaged over a period of time not to exceed four weeks for the purpose of determining whether overtime is due. The employer no longer needs a government permit to do this.

## Rest Periods

- Minimum daily and weekly rest periods are protected by law. The *ESA* provides for a new daily rest period of 11 consecutive hours off in a 24-hour period. It also ensures that an employee must be allowed 24 consecutive hours off in each week or 48 hours off (two consecutive days) every two weeks. An employee must also have eight hours free from work between shifts – unless the total time worked on successive shifts does not exceed 13 hours, or unless the employee and employer agree otherwise in writing.